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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-379

13 **DIANE GUSTIN LOMBARD**
14 **2381 Villaret Drive**
Huntsville, AL 35803

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Registered Nurse License No. 766307**

16 Respondent.

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18
FINDINGS OF FACT

19 1. On November 7, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official
20 capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer
21 Affairs, filed Accusation No. 2013-379 against Diane Gustin Lombard (Respondent) before the
22 Board of Registered Nursing. (Accusation attached as Exhibit A.)

23 2. On January 28, 2010, the Board of Registered Nursing (Board) issued Registered
24 Nurse License No. 766307 to Respondent. The Registered Nurse License expired on March 31,
25 2011, and has not been renewed.

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1 3. On November 7, 2012, Respondent was served by Certified and First Class Mail
2 copies of Accusation No. 2013-379, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)
4 at Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
6 of record was and is 2381 Villaret Drive, Huntsville, AL 35803.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

9 5. On or about November 20, 2012, the Domestic Return Receipt was returned by
10 US Postal Service indicating a delivery date of November 13, 2012.

11 6. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the
13 respondent files a notice of defense, and the notice shall be deemed a specific
14 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon
16 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
17 No. 2013-379.

18 8. California Government Code section 11520 states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense or to appear at
20 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence
21 without any notice to respondent.

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on

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1 file at the Board's offices regarding the allegations contained in Accusation No. 2013-379, finds
2 that the charges and allegations in Accusation No. 2013-379, are separately and severally, found
3 to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for
6 Investigation and Enforcement is \$895.00 as of December 10, 2012.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Diane Gustin Lombard has
9 subjected her Registered Nurse License No. 766307 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
12 Nurse License based upon the following violations alleged in the Accusation which are
13 supported by the evidence contained in the Default Decision Evidence Packet in this case.

14 4. Respondent has subjected her license to disciplinary action under Code section
15 2761, subdivision (a)(4), in that her Alabama registered nurse license has been disciplined in a
16 disciplinary action entitled *In the Matter Of: N. Genell Lee, RN, MSN, JD, Executive Officer,*
17 *Alabama Board of Nursing, Complainant, v. Diane Gustin Lombard, License Number 1-109556,*
18 *Respondent.* The State of Alabama Board of Nursing (Alabama Board) issued Findings Of Fact,
19 Conclusions Of Law, and an Order in Case Number 2007-1082 dated March 19, 2010,
20 suspending Respondent's registered nurse license for 12 months effective March 22, 2010, and
21 placing her on probation for 12 months thereafter. The Alabama Board issued the order based
22 upon Respondent's unprofessional conduct when she made medication errors affecting two
23 patients while assigned at the Progressive Cardiac Care Unit of Crestwood Medical Center's
24 Cardiology Department.

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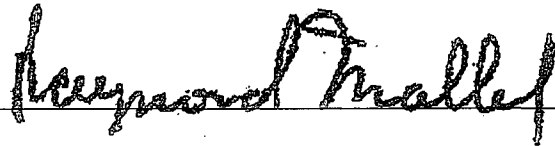
ORDER

IT IS SO ORDERED that Registered Nurse License No. 766307, heretofore issued to Respondent Diane Gustin Lombard, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on APRIL 11, 2013.

It is so ORDERED MARCH 12, 2013



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

70659097.DOC
DOJ Matter ID:SD2012704192

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 ALFREDO TERRAZAS
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3 LINDA K. SCHNEIDER
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-379

13 **DIANE GUSTIN LOMBARD**
2381 Villaret Drive
14 Huntsville, AL 35803

A C C U S A T I O N

15 **Registered Nurse License No. 766307**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about January 28, 2010, the Board of Registered Nursing issued Registered
24 Nurse License Number 766307 to Diane Gustin Lombard (Respondent). The Registered Nurse
25 License expired on March 31, 2011, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

....

COST RECOVERY

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Out Of State Discipline)

8. Respondent has subjected her license to disciplinary action under Code section 2761, subdivision (a)(4), in that she has had a professional license disciplined in another state. The circumstances are that her Alabama registered nurse license has been disciplined in a disciplinary action entitled *In the Matter Of: N. Genell Lee, RN, MSN, JD, Executive Officer, Alabama Board of Nursing, Complainant, v. Diane Gustin Lombard, License Number 1-109556, Respondent*. The State of Alabama Board of Nursing (Alabama Board) issued Findings Of Fact, Conclusions Of Law, and an Order in Case Number 2007-1082 dated March 19, 2010, suspending Respondent's registered nurse license for 12 months effective March 22, 2010, and placing her on probation for 12 months thereafter. The Alabama Board issued the order based upon Respondent's unprofessional conduct when she made medication errors affecting two patients while assigned at the Progressive Cardiac Care Unit of Crestwood Medical Center's Cardiology Department.

9. Based on the evidence before it, the Alabama Board made the following Findings of Fact:

a. On July 11, 2006, the Alabama Board issued Respondent license number 1-109556 to practice as a registered nurse. Respondent's credential would have expired on December 31, 2012, but was voluntarily surrendered for revocation on October 22, 2011. On October 26, 2011, the Alabama Board approved and accepted Respondent's voluntary surrender for revocation of license.

b. The practice of a Registered Nurse includes the administration of medications and treatments prescribed by a licensed or otherwise legally authorized physician, pursuant to Code of Alabama, (1975) section 34-21-1, subdivision (3)(a) and Alabama Board of Nursing Administrative Code, section 610-X-6-.03.

c. Standards of practice adopted by the Board require the Registered Nurse to be responsible and accountable for the quality of nursing care delivered to patients; to accept individual accountability for judgments, actions and nursing competency; and to exercise

appropriate nursing judgment, pursuant to Alabama Board of Nursing Administrative Code, section 610-X-6-.02, subdivision (3), and subdivision (6), and 610-X-6-.03, subdivision (c).

Count 1:

d. Respondent withdrew medications for administration to a patient at a time when the medications were not scheduled for administration.

e. Respondent documented the administration of medications, which she had not removed for administration to a patient.

f. Respondent failed to document the administration of Phenergan, which she removed for administration to a patient.

g. Respondent administered Demerol to an oncology patient contrary to the ordered frequency.

Count 2:

h. Respondent withdrew medications for administration to a patient at a time when the medications were not scheduled for administration.

i. Respondent documented the administration of medications, which she had not removed for administration to a patient.

j. Respondent failed to document the administration of Phenergan, which she removed for administration to a patient.

k. Respondent administered Demerol to an oncology patient contrary to the ordered frequency.

Count 3:

l. Respondent administered Demerol to an oncology patient contrary to the ordered frequency.

Count 4:

m. Respondent withdrew medications for administration to a patient at a time when the medications were not scheduled for administration.

n. Respondent documented the administration of medications, which she had not removed for administration to a patient.

1 o. Respondent failed to document the administration of Phenergan, which
2 she removed for administration to a patient.

3 p. Respondent administered Demerol to an oncology patient contrary to the
4 ordered frequency.

5 **Count 5:**

6 q. Respondent withdrew medications for administration to a patient at a time
7 when the medications were not scheduled for administration.

8 r. Respondent documented the administration of medications, which she
9 had not removed for administration to a patient.

10 s. Respondent failed to document the administration of Phenergan, which
11 she removed for administration to a patient.

12 t. Respondent administered Demerol to an oncology patient contrary to the
13 ordered frequency.

14 **Count 6:**

15 u. Respondent failed to document the administration of Phenergan, which
16 she removed for administration to a patient.

17 **Count 7:**

18 v. Respondent admitted she called the primary physician after the
19 administration of Demerol to an oncology patient contrary to the ordered frequency, but entered
20 the physician order as if the order was obtained prior to the administration of the medication.

21 10. Based on the evidence before it, the Alabama Board made the following

22 Conclusions of Law:

23 **Count 1:**

24 a. Respondent failed to practice nursing in accordance with the Alabama
25 Nurse Practice Act and rules and regulations applicable to the area of nursing practice, in
26 violation of Code of Alabama, (1975) section 34-21-25, and Alabama Board of Nursing
27 Administrative Code, section 610-X-8-.03(6)(a).

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1 **Count 2:**

2 b. Respondent failed to practice nursing in accordance with the Alabama
3 Nurse Practice Act and rules and regulations applicable to the area of nursing practice, in
4 violation of Code of Alabama, (1975) section 34-21-25, and Alabama Board of Nursing
5 Administrative Code, section 610-X-8-.03(6)(b).

6 **Count 3:**

7 c. Respondent practiced beyond her scope of practice as determined by
8 license status, in violation of Code of Alabama, (1975) section 34-21-25, and Alabama Board of
9 Nursing Administrative Code, section 610-X-8-.03, subdivision (6)(c)(ii).

10 **Count 4:**

11 d. Respondent failed to use appropriate nursing judgment, administer
12 medications and treatments in a responsible manner, and demonstrate competence in
13 administering or carrying out patient care, in violation of Code of Alabama, (1975) section 34-
14 21-25, and Alabama Board of Nursing Administrative Code, section 610-X-8-.03, subdivision
15 (6)(f)(i), subdivision (6)(f)(ii), and subdivision (6)(f)(iii).

16 **Count 5:**

17 e. Respondent failed to make entries, destroyed or altered entries, charted
18 before assessment or delivery of care, or made false entries in patient, employer, or employee
19 records, in violation of Code of Alabama, (1975) section 34-21-25, and Alabama Board of
20 Nursing Administrative Code, section 610-X-8-.03, subdivision (6)(g).

21 **Count 6:**

22 f. Respondent failed to timely, accurately, legibly, and completely report and
23 document on appropriate records a patient's status, including signs and symptoms, responses,
24 treatments, medications, other nursing care rendered, communication of pertinent information
25 to other health team members, and unusual occurrences involving the patient, in violation of
26 Code of Alabama, (1975) section 34-21-25, and Alabama Board of Nursing Administrative
27 Code, section 610-X-8-.03, subdivision (6)(h).

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1 **Count 7:**

2 g. Respondent exhibited inappropriate or unprofessional behavior in the
3 workplace, in violation of Code of Alabama, (1975) section 34-21-25, and Alabama Board of
4 Nursing Administrative Code, section 610-X-8-.03, subdivision (6)(q).

5 **Additional Conclusions Of Law:**

6 h. That the Board has jurisdiction of the cause pursuant to Code of Alabama,
7 (1975) section 34-21-25.

8 i. There were no objections related to notice, specificity, or other
9 jurisdictional or constitutional defects.

10 j. Respondent's conduct constitutes grounds for disciplinary action for
11 violation of Code of Alabama, (1975) sections 34-21-1, subdivision (3)(a) and 34-21-25; and
12 Alabama Board of Nursing Administrative Code, sections 610-X-6-.02, subdivision (3) and
13 subdivision (6); 610-X-6-.03; 610-X-6-.03, subdivision (c); 610-X-8-.03, subdivision (6)(a); 610-
14 X-8-.03, subdivision (6)(b); 610-X-8-.03, subdivision (6)(c)(ii); 610-X-8-.03, subdivision
15 (6)(f)(i), subdivision (6)(f) (ii), and subdivision 6(f)(iii); 610-X-8-.03, subdivision (6)(g); 610-X-
16 8-.03, subdivision (6)(h); and 610-X-.03, subdivision (6)(q).

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein
19 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking or suspending Registered Nurse License Number 766307, issued to
21 Diane Gustin Lombard;

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2. Ordering Diane Gustin Lombard to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: November 7, 2012 Stacie Ben
for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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